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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,826	11/30/2001	Harry J. Chmielewski	53394.000442	2686

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,826

Applicant(s)

CHMIELEWSKI, HARRY J.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12, 14-23, 26-39, and 42-85 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Qin et al. (6,469,130).

Qin discloses an absorbent web for use in absorbent articles, as described in column 3, lines 35-40, which are well-known to comprise a topsheet, backsheet, and absorbent core. The absorbent web comprises a superabsorbent polymer having an AUL value of less than about 25 g/g at 0.3 psi, as disclosed in column 18, lines 41-44. Qin remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer disclosed in the instant specification as fulfilling the limitation claimed for the GII. The superabsorbent polymer of Qin therefore inherently fulfills the claimed limitation.

In the alternative, Qin discloses a desire for a superabsorbent polymer with superior absorbency. The instant specification states on page 11 that polymers having

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a GII exhibit superior absorbency, and further states that one of ordinary skill in the art would be readily able to prepare and identify superabsorbent polymers meeting the claimed characteristics. Therefore, since Qin provides the claimed absorption properties and chemical structure, it would be obvious to one of ordinary skill in the art at the time of invention to also provide the claimed Gel Integrity Index, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

With respect to claims 2-5, 16, 29-32, 42-44, 52-54, and 62-65, the superabsorbent polymer is about 33% by weight, and wettable fibers comprise 67%, as disclosed in column 19, lines 11-13.

With respect to claims 6, 33, 45, 55, and 66, the superabsorbent polymer comprises a stabilizing agent, as disclosed in column 18, lines 29-31.

With respect to claims 7, 18, 27, 34, 46, and 56, the superabsorbent polymer is crosslinked, as disclosed in column 18, line 41.

With respect to claims 8, 19, 35, 47, and 57, the superabsorbent polymer is polyacrylate, as disclosed in column 18, line 29.

With respect to claims 9-12, 20-23, 36-39, 48-51, 58-61, 67-70, and 82-85, the superabsorbent polymer is disclosed in the instant specification as being suitable to fulfill the limitation of the GII, and therefore the superabsorbent polymer of Qin fulfills the claimed limitations.

With respect to claims 15 and 26, the absorbent article is a diaper, training pant, sanitary napkin, or hygienic garment, as disclosed in column 3, lines 35-40.

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With respect to claim 17, the superabsorbent polymer is in particulate form, as disclosed in column 18, line 38.

With respect to claim 28, a diaper comprises front and rear waist portions, a waist opening, a crotch region, and leg openings.

With respect to claims 71-81, the absorbent article is prepared by combining the superabsorbent polymer and the wettable fibers, as disclosed in column 19, lines 7-63.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14, 24-25, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qin et al. (6,469,130) as applied to claims 1, 16, and 28 above, and further in view of Roberts et al. (3,875,942).

Qin discloses all aspects of the claimed invention with the exception of an additive. Roberts teaches the use of a medicament in the absorbent core of an absorbent article to maintain the wellness of the wearer's skin, as disclosed in column 1, lines 36-40. It would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the medicament of Roberts into the absorbent article of Qin in order to maintain the wellness of the wearer's skin.

Response to Arguments

Applicant's arguments with respect to claims 1-85 have been considered but are moot in view of the new ground(s) of rejection.

In response to the applicant's argument that the Gel Integrity Index of a superabsorbent polymer is not inherent to the chemical structure of the polymer, nor is it linked to the AUL of the polymer, it is noted that the instant specification describes the GII as being dependent upon the absorption and swelling properties of the superabsorbent polymer. The polymer disclosed by Qin is described in the instant specification as being suitable for the instant invention, and is described by Qin as fulfilling the claimed limitation of absorbancy. It is therefore the examiner's position that the polymer of Qin and the polymer of the instant specification, since they have the same chemical structure, will function in the same manner. The polymer of Qin will therefore exhibit a GII within the claimed range. The applicant's argument that the GII is dependent on a variety of characteristics, and therefore not inherent to polyacrylate, is not persuasive since the applicant has not disclosed what characteristics result in the polymer of the instant invention exhibit a certain GII that are not shared by the polymer of Qin. The applicant has not supplied sufficient evidence or reasoning to overcome the examiner's assertion of inherency.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CWA
cla
June 12, 2005


Larry I. Schwartz
Supervisory Patent Examiner
Group 3700